



The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HAMPERS
COMMISSIONER

December 3, 1982

("Company") is a major oil company that sells tangible personal property, including motor fuels, to the Consolidated Rail Corporation ("Conrail") and the National Railroad Passenger Corporation ("Amtrak"). You inquire whether the Massachusetts gasoline, special fuels, and sales and use taxes apply with respect to the Company's sales to Conrail and Amtrak.

Conrail is a for-profit corporation which was established in 1974 to provide a rail service system in the Midwest and Northeast regions of the United States (P.L. 93-236, Title III, s. 301).

Section 1140(a) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) states that Conrail "shall be exempt from liability for any State tax, except for any tax imposed by any political subdivision of a State", until the interest of the United States in the common stock of the Corporation is sold.

Amtrak was created in 1970 as a for-profit corporation to provide intercity rail passenger service (P.L. 91-518, Title III, s. 301).

Title I of the Department of Transportation and Related Agencies Appropriation Act, 1982 (P.L. 97-102), which was effective for the fiscal year ending September 30, 1982, stated with respect to Amtrak that

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"none of the funds appropriated for the benefit of the Corporation pursuant to this Act or the revenues or other assets of the Corporation or any railroad subsidiary thereof shall be available for payment to any State, political subdivision of a State, or local taxing authority for any taxes or other fees levied on the Corporation."

Title I, Chapter XII of the Supplemental Appropriations Act, 1982 (P.L. 97-257) provides with respect to Amtrak that,

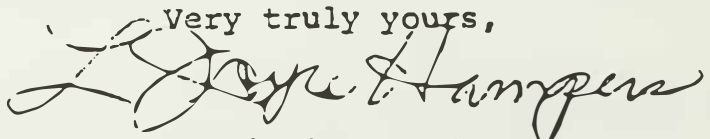
"notwithstanding any other provision of law, the Corporation shall be exempt from any taxes or other fees imposed by any State, political subdivision of a State, or local taxing authority which are levied on the Corporation, or any railroad subsidiary thereof, from and after October 1, 1981, including such taxes and fees levied after September 30, 1982".

The ultimate burden of the gasoline, special fuels, and sales and use taxes is borne by the retail purchaser of the property sold, notwithstanding the fact that the legal incidence of the tax may lie elsewhere (G.L. c. 64A, ss. 4, 9; c. 64E, ss. 4, 10; c. 64H, ss. 2, 3; c. 64I, ss. 3, 4).

Sales which the Commonwealth is prohibited from taxing under the Constitution or laws of the United States are specifically exempted from the sales and use taxes (G.L. c. 64H, s. 6(a); G.L. c. 64I, s. 7(b)).

Based on the foregoing, it is ruled that the gasoline, special fuels and sales and use taxes do not apply with respect to the Company's sales to Conrail and Amtrak.

Very truly yours,


Commissioner of Revenue

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LR 82-112